



DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 34

RIN: 1290-AA32

Rescission of Regulations Implementing the Nondiscrimination and Equal Opportunity Provisions of the Job Training Partnership Act of 1982

AGENCY: Office of the Assistant Secretary for Administration and Management, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Labor proposes to remove regulations for an inoperative program while continuing to require non-discrimination and equal-employment opportunity under its programs. The Department is undergoing a process of identifying regulations that are “outdated” and “unnecessary.” The regulations to be rescinded by the proposed rule are “outdated” because they administer a program that no longer exists. And they are “unnecessary” because they currently serve no purpose, as their existence or non-existence has no impact on the Department’s enforcement of non-discrimination standards under its existing programs. In particular, the Department proposes to rescind its regulations implementing Section 167 of the Job Training Partnership Act of 1982, as amended (JTPA). Section 167 contained the

nondiscrimination and equal-opportunity provisions of the JTPA. In 1998, Congress passed the Workforce Investment Act (WIA), which repealed the JTPA and required the Secretary of Labor to transition any authority under the JTPA to the system that WIA created. WIA, in turn, was subsequently altered by the Workforce Innovation and Opportunity Act (WIOA). In sum, the proposed rule removes regulations for an inoperative program, but has no impact on existing non-discrimination rules.

DATES: To be assured of consideration, comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted, identified by Regulatory Information Number (RIN) 1290-AA32, by any one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (202) 693-6505 (for comments of six pages or less).
- Mail or Hand Delivery/Courier: Naomi Barry-Perez, Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.
- Email: CRC-WIOA@dol.gov.

Please submit your comment by only one method. Receipt of comments will not be acknowledged; however, the Department will post all comments received on <http://www.regulations.gov> without making any change to the comments, including any personal information provided. The <http://www.regulations.gov> website is the Federal e-rulemaking portal, and all comments posted there are available and accessible to the public.

The Department cautions commenters not to include personal information, such as Social Security Numbers, personal addresses, telephone numbers and email addresses, in comments, as such submitted information will become viewable by the public via <http://www.regulations.gov>. It is the responsibility of the commenter to safeguard personal information. Comments submitted through <http://www.regulations.gov> will not include the commenter's email address unless the commenter chooses to include that information as part of a comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the website indicated above.

The Department will also make all the comments it receives available for public inspection during normal business hours at the Civil Rights Center at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of this notice of proposed rulemaking (NPRM) available, upon request, in large print and as an electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact CRC at (202) 693-6500 (VOICE) or (800) 877-8339 (TTY).

FOR FURTHER INFORMATION CONTACT: Naomi Barry-Perez, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210, telephone (202) 693-6500 (VOICE) or (800) 877-8339 (Federal Relay Service — for TTY), or by email at CRC-WIOA@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under the JTPA, the Department of Labor provided financial assistance to certain recipients for the purpose of establishing programs to meet the job training needs of youth and adults facing serious barriers to employment. Section 167 of the JTPA contained nondiscrimination and equal opportunity provisions that prohibited discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship status or participation in a JTPA-funded program or activity.

As amended by the Job Training Reform Amendments of 1992, the JTPA provided that final regulations implementing Section 167 be issued within 90 days of the enactment date of the Job Training Reform Amendments of 1992. On January 15, 1993, the Department issued the implementing regulations at 29 CFR part 34 for the nondiscrimination and equal opportunity provisions of the JTPA. The rule applies to recipients of Federal financial assistance under the JTPA. The rule imposes general nondiscrimination and equal opportunity requirements, as well as certain affirmative obligations, such as data collection and recordkeeping requirements.

The JTPA was repealed by the Workforce Investment Act of 1998 (WIA). The Department's regulations implementing WIA provided for the phased transition of the JTPA programs to WIA, to be fully completed by July 1, 2000. Section 188 of WIA contained substantially similar nondiscrimination and equal opportunity requirements as those contained in the JTPA. The Department issued regulations implementing WIA Section 188 at 29 CFR part 37 on November 12, 1999. WIA in turn was superseded by the Workforce Innovation and Opportunity Act (WIOA) in 2014. Section 188 of WIOA contains the same nondiscrimination

and equal opportunity provisions as those in WIA. The Department issued final regulations implementing WIOA Section 188 at 29 CFR part 38 on December 2, 2016.

II. Purpose of the Regulatory Action

The purpose of this action is to rescind the regulations implementing the nondiscrimination and equal opportunity provisions of the JTPA. All funding under the JTPA, together with the obligation to comply with the nondiscrimination and equal opportunity requirements of Section 167, has expired. The Section 167 regulations have been superseded by those implementing Section 188 of first WIA, then WIOA. The regulations at 29 CFR part 34 govern a program that has not been in operation for more than a decade and so are outdated and unnecessary. Therefore, the rescission of the regulations is ministerial in nature. However, the Department wishes to provide the public with the opportunity to submit comments on any aspect of this proposed action.

III. Statement of Legal Authority

Statutory Authority

The Department proposes this rescission consistent with the repeal of the JTPA in Section 199(b)(2) of the Workforce Investment Act of 1998, Pub. L. 105-220.

Departmental Authorization

CRC issued the regulations implementing the nondiscrimination and equal opportunity obligations of the JTPA pursuant to Secretary's Order 2-81, 50 Fed. Reg. 28853 (July 16, 1985), which authorized the Assistant Secretary for Administration and Management (OASAM), working through the Director, Office of Civil Rights (OCR), now CRC, to establish and formulate all policies, standards, and procedures, as well as to issue rules and regulations, governing the civil rights enforcement programs under grant-related nondiscrimination statutes.

Secretary's Order 2-85 similarly delegated to OASAM, working through the Director, OCR, now CRC, exclusive authority for the implementation and enforcement of the nondiscrimination and equal opportunity provisions of the JTPA. Secretary's Orders 2-81 and 2-85 were canceled following the repeal of the JTPA. Secretary's Order 04-2000, 65 FR 69184 (Nov. 15, 2000), re-delegated the relevant responsibilities to CRC. The delegation in Secretary's Order 04-2000 covers CRC's proposed rescission of the regulations implementing the nondiscrimination and equal opportunity provisions of the JTPA.

IV. Rulemaking Analyses and Notices

A. Administrative Procedure Act and Companion Direct Final Rulemaking

Direct final rulemaking in this instance is appropriate because the action is solely ministerial in nature, the underlying statute (Section 167 of the JTPA) has been superseded by the requirements of Section 188 of WIA and WIOA, and all funding under the JTPA has expired. Direct final rulemaking is used when a rule is noncontroversial and is expected to elicit no adverse comment. Here, direct final rulemaking is appropriate because the rule does nothing more than remove regulations for a program that is no longer operative. Under this circumstance, the use of direct final rulemaking satisfies APA requirements.

The Department is publishing concurrently with this proposed rule an identical direct final rule in the rules section of this issue of the Federal Register. This companion proposed rule provides the procedural framework to finalize the rule in the event that any significant adverse comment is received. The comment period for this proposed rule runs concurrently with the comment period for the direct final rule. Any comments received in response to this proposed rule will also be considered as comments regarding the companion direct final rule.

If any significant adverse comments are received during the comment period, the Department will withdraw the direct final rule and proceed in developing a final rule using the usual notice-and-comment procedure. If no significant adverse comment is received during the comment period, the Department will publish a document withdrawing this proposed rule.

B. Executive Orders 12866, 13563, and 13771

This proposed rule is not a “significant regulatory action” within the meaning of Executive Order 12866 and the principles reaffirmed in Executive Order 13563. In addition, this rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*.

D. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have federalism implications. This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

E. Unfunded Mandates Reform Act of 1995

This proposed rule does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

F. Assessment of Federal Regulations and Policies on Families)

This proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act 1999, 5 U.S.C. 601 note.

G. Regulatory Flexibility Act of 1980

Pursuant to Section 605(b) of the Regulatory Flexibility Act, CRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). As explained above, this rule is ministerial in nature and does not impose any additional regulatory burdens.

H. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

I. Executive Order 13175 (Indian Tribal Governments)

This proposed rule does not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

J. Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights)

This NPRM is not subject to Executive Order 12630 because it does not involve

implementation of a policy that has takings implications or that could impose limitations on private property use.

K. Executive Order 12988 (Civil Justice Reform)

The NPRM was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The NPRM was: (1) reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects

29 CFR Part 34

Implementation of the Nondiscrimination and Equal Opportunity Requirements of the Job Training Partnership Act of 1982, as Amended (JTPA)

For the reasons set forth in the preamble, the Department proposes to rescind 29 CFR part 34 in its entirety as follows:

PART 34—[REMOVED AND RESERVED]

1. Remove and reserve part 34, consisting of §§ 34.1 through 34.53.

Signed at Washington DC, on September 13, 2018

Bryan Slater

Assistant Secretary, Office of the Assistant Secretary for Administration and Management,
Department of Labor

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